MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 146 OF 1996

CHHAGAN ANAND SOLANKI)
residing at Room No. 95,)
Building No.5, Om Sadguru Prasad
Co-op. Housing Society Ltd.,)
Shastri Nagar, Goregaon (W))
Bombay 400 062.) .. APPELLANT
(Orig. Complainant)

VERSUS

1. SHAMJI MULJI MARU)
Telephone Exchange,)
Bhairavpara, Palitana, Dist.)
Bhavnagar, Guj. 364 270 and)
at present posted and working
at Telephone Exchange, Broach
Gujarat.)

4. THE STATE OF MAHARASHTRA) RESPONDENTS
(No.1 Org. Accused)

Mr. G. V. Pandya for appellant
Mr. S. B. Rathore for respondent 1
Mr. Y. S. Shinde, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: OCTOBER 29, 2007.

ORAL JUDGMENT:

. Respondent 1 (hereinafter referred to as "the accused") was tried in the 26th Court of Metropolitan Magistrate, Borivali, Mumbai, in C. C. No. 90/S of 1986 for offence punishable under Sections 500 of the Indian Penal Code. By the impugned judgment and order the learned Magistrate acquitted the accused and hence the original complainant has filed the present appeal.

2. The case of the appellant (hereinafter referred to as "the complainant) is that on 2/12/84 he received a letter at Goregaon. The letter was undated. It was in Gujarati. It was addressed to him. According to the complainant, the letter was sent by the accused who is the brother of his daughter-in-law. The letter contained defamatory imputations.

3. According to the complainant, he is illiterate and he does not know reading and writing. He is settled in Bombay. He originally comes from

village Umrala, District Bhavnagar, Gujarat. He belongs to Scheduled Caste.

4. According to the complainant, the accused resides at Palitana, Gujarat. He is employed as a Telephone Operator. Prior to December, 1984 his daughter-in-law Maniben was illegally detained and kept in confinement by the accused with him. Due to this incident the relations between the two families were strained. The accused was refusing to send his sister to the matrimonial home. Later on in May, 1985, the complainant's son took custody of Maniben under an order of the Magistrate's court at Bhavnagar. Thereafter they are residing together. According to the complainant it is against the background of these facts that the accused has written this letter.

5. The complainant's case is that the letter is written by the accused. He has identified the handwriting of the accused. The complaint was filed on 20/3/86.

6. The particulars of offence were explained to the accused. The accused pleaded not guilty and claimed to be tried. His defence was one of

denial. He did not examine defence witness.

7. The complainant examined himself. He also examined his daughter-in-law Maniben. He has produced letter allegedly sent by the accused to him along with its translation. The translation is at Exhibit-C-I. After perusing the evidence on record the learned Magistrate acquitted the accused as aforesaid and hence this appeal.

8. I have heard Mr. Pandya, learned counsel appearing for the appellant/complainant. He strenuously contended that the impugned judgment and order is perverse and deserves to be set aside. He pointed out that the relations between the complainant and the accused were strained. He drew my attention to the evidence of the complainant where the complainant had referred to the strained relations between the two sides. He also drew my attention to the evidence of PW 2 Maniben where she has stated that she had not visited her parent's house for the last about 10 years due to dispute between the accused and her father-in-law. Learned Counsel submitted that, therefore, it is clear that Maniben was not ill-treated by the complainant and his family. She was staying with the complainant's

son. She has admitted that there was dispute between the accused and her father-in-law and the case is filed because of the letter which according to her is bad. Learned Counsel submitted that Maniben's evidence completely supports the complainant. He further submitted that against the background of the aforementioned facts no other person except the accused could have sent such a defamatory letter to the complainant. The learned counsel submitted that the impugned judgment is perverse. It may, therefore, be set aside and the accused be convicted in accordance with law.

9. Learned Counsel for the first respondent is not present. I have also heard Mr. Shinde, learned APP.

10. It is well settled by a catena of judgments of the Supreme Court that unless the judgment and order of acquittal is perverse, the High Court should not interfere with it. It is further clarified by the Supreme Court that presumption of innocence of the accused is further strengthened by the judgment and order of acquittal and therefore, great care should be taken by the High Court while disturbing the judgment and order of acquittal. If

the view taken by the trial court is a reasonably possible view, the High Court should not disturb it even if some other view is possible on the basis of the facts before it. The High Court cannot substitute that view with the reasonably possible view taken by the trial court. (**The State of Rajasthan v. Raja Ram, (2003) 8 SCC 180**.)

11. Keeping in mind the above well settled principles, I shall deal with this case. Undoubtedly the relations between the accused and the complainant were strained. This fact has been admitted by PW 2 Maniben, the sister of the accused. It was urged that, therefore, no other person could have sent this letter but the accused. In all probability the accused might have sent the letter but in a criminal trial proof beyond reasonable doubt is necessary. A man cannot be convicted on mere conjectures and surmises. The prosecution or the complainant has to lead cogent and reliable evidence so that the accused can be convicted. The disputed letter is on record. The complainant has said that it is written by the accused. He has stated that the handwriting is that of the accused. However, the complainant has not sent the letter to the handwriting expert along

with specimen signature of the accused. If the handwriting expert's evidence or his report supporting the complainant was on record, the matter would have ended there. The complainant should have at least produced the specimen handwriting of the accused in the court so that the court could have compared the disputed letter with that letter and held that the disputed letter is indeed in the handwriting of the accused. That has not been done. Therefore, we are left with only the statement of the complainant that the letter is written by the accused. Such statement against the background of strained relationship cannot take the place of proof. The learned Magistrate is therefore, right in holding that the offence of defamation is not proved.

12. In the facts of this case, in my opinion, the view taken by the learned Magistrate is a reasonably possible view, which cannot be disturbed in this appeal against acquittal. I may only add that this is a case where the accused will have to be acquitted by giving him benefit of doubt. With this observation this appeal is dismissed.

JUDGE.

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CHHAGAN ANAND SOLANKI .. APPELLANT

VERSUS

SHAMJI MULJI MARU & ANR. .. RESPONDENTS

Mr. G. V. Pandya for appellant

Mr. S. B. Rathore for respondent 1

Mr. Y. S. Shinde, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: OCTOBER 29, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment,

this court has dismissed the appeal.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 146 OF 1996

DATE OF DECISION:29/10/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE :

1. Whether Reporters of Local Papers be allowed to see the Judgment?)

2. To be referred to the Reporters or not?)

3. Whether Their Lordships wish to see the fair copy of the Judgment?)

4. Whether this case involves a substantial question of law as to)

the interpretation of the)
Constitution of India, 1950 or any)
Order made thereunder?)

5. Whether it is to be circulated to)
the Civil Judges?)

6. Whether the case involves an impor-)
tant question of law and whether)
a copy of the judgment should be)
sent to Nagpur, Aurangabad and Goa)
Offices?)